

**AGENDA**  
**FREMONT REDEVELOPMENT AGENCY REGULAR MEETING**  
**SEPTEMBER 20, 2011**  
**7:00 P.M.**

- 1. CALL TO ORDER**
- 2. CONSENT CALENDAR**

*Items on the Consent Calendar are considered to be routine by the Redevelopment Agency and will be enacted by one motion and one vote. There will be no separate discussion of these items unless an Agency Member or citizen so requests, in which event the item will be removed from the Consent Calendar and considered in its normal sequence on the agenda. Additionally, other items without a "Request to Address the Redevelopment Agency Board" card in opposition may be added to the consent calendar. (In the report section of the agenda, consent items are indicated by an asterisk.)*

2.1 *Approval of Minutes – None.*

2.2 **APPROVAL AND AUTHORIZATION TO EXECUTE AN AGENCY TRANSFER  
PAYMENT AGREEMENT BETWEEN THE REDEVELOPMENT AGENCY AND THE  
CITY OF FREMONT**

*Authorization for the Executive Director to Enter into an Agency Transfer Payment Agreement between the Redevelopment Agency and the City of Fremont to Allow for the Payment of Certain Required Remittance Payments Pursuant to Part 1.9 of the Redevelopment Law*

**Contact Person:**

<b>Name:</b>	<i>Elisa Tierney</i>	<i>Harriet Commons</i>
<b>Title:</b>	<i>Redevelopment Agency Director</i>	<i>Director</i>
<b>Dept.:</b>	<i>Community Development</i>	<i>Finance</i>
<b>Phone:</b>	<i>510-494-4501</i>	<i>510-284-4010</i>
<b>E-Mail:</b>	<i>etierney@fremont.gov</i>	<i>hcommons@fremont.gov</i>

**RECOMMENDATION:** *Approve a resolution and authorize the Executive Director to enter into an Agency Transfer Payment Agreement between the Redevelopment Agency and the City of Fremont to allow for the payment of certain required remittance payments pursuant to Part 1.9 of the Redevelopment Law.*

- 3. PUBLIC COMMUNICATIONS**

3.1 Oral and Written Communications

**4. PUBLIC HEARINGS – None.**

**5. OTHER BUSINESS**

5.1 Report Out from Closed Session of Any Final Action

**6. ADJOURNMENT**





**\*2.2 APPROVAL AND AUTHORIZATION TO EXECUTE AN AGENCY TRANSFER PAYMENT AGREEMENT BETWEEN THE REDEVELOPMENT AGENCY AND THE CITY OF FREMONT**

**Authorization for the Executive Director to Enter into an Agency Transfer Payment Agreement between the Redevelopment Agency and the City of Fremont to Allow for the Payment of Certain Required Remittance Payments Pursuant to Part 1.9 of the Redevelopment Law**

**Contact Person:**

Name:	Elisa Tierney	Harriet Commons
Title:	Redevelopment Agency Director	Director
Dept.:	Community Development	Finance
Phone:	510-494-4501	510-284-4010
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**Executive Summary:** As a result of the recent fundamental restructuring of redevelopment in California, the City, on behalf of the Redevelopment Agency, will be required to make annual payments to local schools and other entities. To do so, the law allows the City and the Agency to enter into an agreement whereby the Agency transfers a portion of its tax increment revenue to the City for the City's use in making these required payments. Staff requests authorization from the Agency Board to execute an Agency Transfer Payment Agreement between the Redevelopment Agency and the City of Fremont for the purpose of transferring funds to the City to make the required payments.

**BACKGROUND:** ABx1 26 (the "Dissolution Act") and ABx1 27 (the "Voluntary Program Act") (together, the "Redevelopment Restructuring Acts"), became effective in late June 2011. The Dissolution Act first immediately suspended all new redevelopment activities and incurrence of indebtedness, and purported to dissolve all redevelopment agencies, effective October 1, 2011. The Voluntary Program Act then allowed redevelopment agencies to avoid dissolution under the Dissolution Act if their sponsoring community opted in to a "voluntary alternative redevelopment program" (the "Voluntary Program") that requires annual contributions to local schools and special districts. On July 19, 2011, the City enacted the Continuation, or "Opt-in," Ordinance to participate in the Voluntary Program and exempt the Agency from the requirements of the Dissolution Act.

The California Redevelopment Association, the League of California Cities, and others challenged the validity and constitutionality of the Redevelopment Restructuring Acts in mid-July 2011. On August 11, 2011, the California Supreme Court agreed to review the matter and stayed the effectiveness of much of the Redevelopment Restructuring Acts pending resolution of this litigation. The Court's Stay postpones the effectiveness of the Voluntary Program Act in its entirety. According to the Stay, the Court anticipates making a final decision on the Redevelopment Restructuring Acts by January 15, 2012. However, the Stay left most of the Dissolution Act in effect. Thus, until the Court makes a final decision on the Redevelopment Restructuring Acts, redevelopment agencies are prohibited from activities except in connection with existing enforceable obligations.

**DISCUSSION/ANALYSIS:** Although currently suspended by the Court Stay, the Voluntary Program Act, if in effect, would require significant remittance payments from the sponsoring community of any

agency wishing to continue its existence. On July 19, 2011, prior to the Court's issuance of the Stay, the City Council enacted a Continuation Ordinance to keep the Agency in existence and to participate in the Voluntary Program. Section 34194.2 of the Voluntary Program Act provides that the City and the Agency can enter into an agreement whereby the Agency transfers a portion of its tax increment to the City for the City's use in making the remittance payments required under the Voluntary Program Act (the "Agency Transfer Payment Agreement"). The Continuation Ordinance expressly anticipates the execution of an Agency Transfer Payment Agreement as the only funding source available to the City to pay the annual remittance payments.

The Stay results in an untenable position for the City and the Agency. The Agency is generally prohibited from engaging in new activities (because the Stay did not affect the Dissolution Act), but the City and the Agency both need to conduct financial planning to assure timely funding by the City of the community remittance payments under the Voluntary Program Act and the commitment made by the City in the Continuation Ordinance should the Voluntary Program survive. Likewise, in order to be sure that it can draw the necessary tax increment revenues for the coming year to provide the City with funds for the initial remittance payment, the Agency needs to be able to reflect that obligation on its upcoming October 1, 2011 Statement of Indebtedness. For these reasons, it is essential that the City and the Agency be able to approve and execute the Agency Transfer Payment Agreement as expeditiously as possible in light of the Stay.

Ideally, any final judgment by the Court would address this problem caused by the Stay by providing communities like the City and its Agency, that desire to participate in the Voluntary Program and that enacted the Continuation Ordinance prior to the Stay, additional time to approve the necessary Transfer Payment Agreement after the Stay is lifted and prior to the date the initial community remittance payment is due (should the Court find the Redevelopment Restructuring Acts to be constitutional). However, there is no guarantee that the Court's final decision will address this predicament that the City, the Agency, and other communities/redevelopment agencies throughout the State now face.

In order for the City and the Agency to be able to perform the necessary financial planning to comply with the Voluntary Program Act and the Continuation Ordinance's commitment to make the required annual community remittance payments in light of the Stay, staff in consultation with the City Attorney and Agency special counsel, has determined that the most prudent course of action is for the Agency Transfer Payment Agreement to be conditionally authorized and executed by the City and the Agency at this time. The terms of such Agency Transfer Payment Agreement will only become operative upon the Court lifting the Stay, and ultimately deciding that the Redevelopment Restructuring Acts are constitutional.

Consequently, the proposed Agency Transfer Payment Agreement that is before the Agency Board indicates that it immediately binds the two parties, but that their respective obligations to perform under the agreement will become operative only if the Court lifts the Stay and determines that the Redevelopment Restructuring Acts are constitutional.

Once operative, the proposed Agency Transfer Payment Agreement calls for the Agency annually to transfer to the City the necessary funds, using tax increment and/or other amounts available to the Agency, for the City, in turn, to make the annual community remittance payments required to continue the Agency's existence and participation in the Voluntary Program. The proposed Agency Transfer

Payment Agreement expressly indicates that the City will make the annual remittance payments exclusively with funds received from the Agency and that the City is not obligated to use any general funds or other revenues available to the City for such purpose.

**FISCAL IMPACT:** The Department of Finance (the "DOF") has calculated a community remittance payment for Fremont for the current fiscal year 2011/12 of \$8,997,931. However, due to an error in the DOF's calculation of the remittance fee, Agency staff believes the DOF calculation to be too high and is disputing this amount. If the appeal is successful, the Agency would likely owe \$8,445,657. For the 2012/13 fiscal year, the DOF has calculated a payment of \$2,136,858, which is an estimate only because payment amounts for succeeding years will be a function of future tax increment revenues as well as any new debt issued by the Agency, as yet undetermined.

**ENVIRONMENTAL REVIEW:** Approval and execution of the proposed Agency Transfer Payment are exempt activities under the California Environmental Quality Act ("CEQA") and do not require CEQA review. Pursuant to State CEQA Guidelines, Section 15378(b)(4), these approvals and actions do not constitute a "project" for CEQA purposes, but instead consist of the creation and continuation of a governmental funding mechanism for potential future projects and programs, and they do not commit funds to any specific project or program. It is recommended that the Agency Executive Director and City Manager cause the filing of the appropriate CEQA Notice of Exemption with the County Clerk for such approvals and actions in accordance with the CEQA guidelines.

**ENCLOSURES:**

- [Draft Resolution](#)
- [Agency Transfer Payment Agreement](#)

**RECOMMENDATION:** Approve a resolution and authorize the Executive Director to enter into an Agency Transfer Payment Agreement between the Redevelopment Agency and the City of Fremont to allow for the payment of certain required remittance payments pursuant to Part 1.9 of the Redevelopment Law.

## **5.1 Report Out from Closed Session of Any Final Action**